

Watkins Motor Lines and its insurance carrier, Liberty Mutual Insurance Co. (referred to jointly as "Watkins"), ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge La Jeunesse's decision regarding D. P.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On June 15, 2001, Ms. P. injured her left shoulder while working for Watkins. On May 24, 2005, she filed an application to compel Watkins to pay additional workers' compensation benefits for her injury. Judge La Jeunesse held an evidentiary hearing on October 3, 2005, and then appointed a panel of physicians to evaluate the medical aspects of Ms. P.'s claim. The panel submitted its report on March 17, 2006. Over Watkins' objection, Judge La Jeunesse accepted the panel's conclusions and, on that basis, awarded additional benefits to Ms. P.. Watkins now asks the Appeals Board to review Judge La Jeunesse's decision. In general, Watkins attacks the sufficiency and admissibility of the medical panel report.

DISCUSSION AND CONCLUSION OF LAW

The fundamental dispute between Watkins and Ms. P. is over the medical question of whether Ms. P.'s work accident has necessitated on-going treatment of her left shoulder. The medical panel's report will play an important part in resolving this medical question, if the report is deemed admissible and persuasive.

Admissibility. Watkins argues that, because it has objected to the medical panel's report, the report is inadmissible as evidence until the ALJ either: 1) returns the report to the panel for clarification; or 2) holds a hearing on Watkins' objection. The Appeals Board does not agree.

Section 34A-2-601 of the Act permits an ALJ to appoint an impartial medical panel to consider the medical aspects of a disputed workers' compensation or occupational disease claim. Subsections 601(2)(d) through (g) require that the parties receive a copy of the panel's report and have an opportunity to object. Subsection 601(2)(f)(1) then provides (emphasis added):

If an objection to a report is filed under Subsection (2)(f), the administrative law judge **may** set the case for hearing to determine the facts and issues involved.

Thus, the statute requires that the parties receive notice of the panel's report and have an opportunity to file objections, but the statute grants discretion to the ALJ to determine whether a hearing should be held to consider the objections. A hearing is not mandatory, nor is there any provision in the statute requiring the ALJ to remand a report to the panel for further consideration

simply because one of the parties has filed an objection. Instead, the statute leaves such matters to the informed judgment of the ALJ.

The Appeals Board views the discretion granted by § 601 as necessary to prevent the medical panel process from being frustrated by unnecessary, time consuming and expensive medical panel hearings and remands. Under the circumstances of this case, as discussed below, the Appeals Board concludes that Judge La Jeunesse properly exercised his discretion by admitting the panel's report into evidence, despite Watkins' objections.

Persuasive force of the panel's report. While § 601 of the Act authorizes use of medical panels to obtain impartial expert evaluations of medical issues, subsection 601(2)(e)(ii) provides that a panel report is not conclusive "if other substantial conflicting evidence in the case supports a contrary finding." In other words, the panel's medical opinions must be weighed against all other medical evidence and opinion. The ALJ must then determine medical probability by a preponderance of all the evidence.

Watkins challenges the medical panel's evaluation of Ms. P.'s medical problems on the grounds the panel did not explicitly state its opinions in terms of "medical probability." While it is true that a claim for workers' compensation or occupational disease benefits must be based on more than medical possibility, the Appeals Board does not accept Watkins' argument that a medical panel opinion is insufficient unless it uses the specific verbal formulation of "medical probability." Such a rule would exalt form over substance. What is more important is that the medical panel reasonably explain its objective findings and the medical judgments upon which its opinion rests.

In this case, the two-member medical panel consisted of an orthopedist and neurologist with no ties to any of the parties. These medical experts had access to all of Ms. P.'s medical records and medical history, including the opinions of her treating physicians and Watkins' medical consultants. The panelists personally examined Ms. P. as well. The panel then issued a report that notes the undisputed facts of Ms. P.'s work accident and then chronicles her ensuing medical treatment. The report then discusses Ms. P.'s current status, including both objective and subjective detail. Ultimately, the panel states its informed opinion that Ms. P. requires additional surgery to treat the medical problems that have resulted from her work accident and injuries at Watkins.

The panel's report is persuasive in its own right, but it is also supported by the opinions of Ms. P.'s treating physicians. The Appeals Board notes the contrary opinion from Watkins' medical consultant. However, on balance, the Appeals Board is persuaded by the medical panel's report. The Appeals Board accepts that report, as well as Judge La Jeunesse's findings and decision based thereon.

ORDER

The Appeals Board affirms Judge La Jeunesse's decision and denies Watkins' motion for review. It is so ordered.

Dated this 13th day of June, 2006.

Colleen S. Colton, Chair

Joseph E. Hatch

Jathan Janove¹

¹ Due to Patricia Drawe's inability to participate in this matter, Jathan Janove has been selected to serve as a member of the Appeals Board pursuant to § 34A-1-303 of the Utah Labor Commission Act.